



September 17, 2008

Comments to the Energy & Carbon Savings Trust

Dylan Voorhees, Clean Energy Director, Natural Resources Council of Maine

Thank you for the opportunity to comment on the Trust's draft emergency rules. NRCM supports the deliberate way the Trust is moving forward to play a constructive immediate role in reducing energy consumption—if possible—while preparing to focus most of its efforts on the larger goal of full rulemaking.

Overall the rules provide a helpful direction, with several opportunities to increase specificity. In response to the Trustees invitation for specific language, I will make most of my comments in the form of specific suggested revisions. Hopefully my revisions will speak for themselves, but do not hesitate to contact me if you have any questions.

I have one important general comment. The threat from rapidly increasing fuel prices to the “public health, safety, and general welfare” is real and sufficient justification for interim rules. However that term is very broad and it is not appropriate to evaluate proposals based on their benefits to “public health, safety, and general welfare”. Reducing fossil fuel consumption, and thus costs, in accordance with the statute will necessarily benefit the general welfare. If you stick closely to your purpose and make limited expenditures which reduce energy consumption and costs prior to the coming winter, I believe you will receive widespread support from stakeholders, policymakers and the public in both the short and long term.

§ 1 PURPOSE

~~The purpose of this Chapter is to address the immediate need for programs that will help Mainers who use fossil fuel for energy purposes cope with high fuel costs by implementing fossil-fuel conservation and energy efficiency measures with funding from the Trust on an interim basis. This proposed These emergency rulemakings would authorize persons to apply for funding from the first two RGGI auctions, would establish criteria to be met to qualify for funding and would establish a method of determining whether an efficiency program is cost-effective for persons applying for funding in 2008 from the first two RGGI auctions. These interim emergency rules in no way modify the overall purpose of the Trust to support the goals and implementation of the RGGI cap and trade program, and fund efficiency measures which reliably reduce greenhouse gas production by fossil fuel combustion at the lowest cost in Trust funds.~~

§ 2 INITIAL FINDING

Following public comment and consultation with various stakeholders and interested parties, the Trust finds that high fossil fuel costs create a potentially insurmountable affordability burden for some Maine users of fossil fuels for energy purposes. The Trust finds that rapid increases in fossil fuel prices are creating an energy emergency which affects many sectors of the state. More specifically, the Trust finds that its fossil-fuel conservation funds could be used, in accordance with statutory criteria, to reduce energy costs in the immediate future, if rules were in place do so. Based on the foregoing, the Trust concludes that, because the threat from high fossil fuel prices to the public health, safety, and general welfare is greatest during the winter and because a major substantive rule cannot be in place in time to address that threat, it is necessary for the Trust to adopt an emergency rule allowing it to expend funds from the first two RGGI auctions for fossil fuel measures implemented prior to the winter of 2008-2009.

§ 4 EMERGENCY FOSSIL FUEL PROGRAMS

B. Prerequisites to qualifying as an “emergency fossil fuel program”

Being a necessary prerequisite to being considered by the Trust as an “emergency fossil fuel program,” an applicant for funding under paragraph A of this section must first demonstrate that the program to be funded would reduce fossil fuel consumption beginning in 2008, address the immediate threat to public health, safety, or general welfare that is presented by high fossil fuel prices. Emergency fossil fuel programs must also meet a minimum threshold of cost-effectiveness as set forth under Section 5 below.

C. Other criteria for emergency fossil fuel programs

1. In addition to meeting the criterion set forth under Section 4(B) above, the applicant must show that the proposed emergency fossil fuel program:
 - (a) Would conserve and/or make more efficient use of fossil fuels for energy purposes (except for the purpose of generating electricity for retail sale) and thereby reduce greenhouse gas emission.
 - (b) Is capable, either because it is well established or otherwise, of deploying the requested funds in a manner that will effectively address conservation or efficiency needs during the winter of 2008-2009;
 - (c) Does not have reasonably available funds from other sources, including but not limited to government programs, with which to fully implement the proposed emergency fossil fuel program during the winter of 2008-2009;

- (d) Has adequate procedures to verify and measure the savings in fossil fuel consumption that each program achieves;
- (e) Any other standard or criterion that the Trust deems appropriate and necessary to the administration of an emergency fossil fuel program.

2. ~~Emergency fossil fuel programs must also meet a minimum threshold of cost-effectiveness as set forth under Section 5 below.~~

D. Awarding of Funds

Whether and how much funding to award to an applicant will be made by the Trust based upon ~~the cost-effectiveness of the proposed program~~, the degree to which it reduces fossil fuel consumption per dollar of Trust expenditure, the extent to which fossil fuel reductions will accrue in 2008, ~~addresses an immediate threat to public safety, health, or general welfare as a result of high fossil fuel prices~~, the overall cost-effectiveness when all quantifiable benefits are included, the amount of funding available, and any other factors the Trust determines to be relevant. After reviewing proposals, the Trust may decide to allocate funds within one or more specific customer class, in accordance with 35-A MRSA §3211-E paragraph 7(D). How much of the proceeds from the September and December 2008 RGGI auctions will be spent on emergency fossil fuel programs shall rest solely with the discretion of the Trust, and nothing in this rule is intended to create any entitlement to any person or entity to funding from the Trust.

§ 5 COST-EFFECTIVENESS TESTS

A. **Modified Societal Test.** Emergency fossil fuel programs that are reasonably likely to satisfy the Modified Societal Test are cost effective. The Modified Societal Test is satisfied when the program's resource benefits exceed its costs. Non-resource benefits, defined at §5(A)1c, shall not be considered for the purpose of prerequisite cost-effectiveness screening under §4(B), but may be included in an overall cost-effectiveness evaluation under §4(D). Costs and benefits shall be considered in the Modified Societal Test regardless of whether they are paid or experienced by the participant, the Trust, or any other individual, business, or government agency.

1. **Program benefits.** Program benefits will include, without limitation, the following:

- a) Avoided fossil fuel costs, using estimated savings in oil, gas or other fossil fuel use, at estimated fossil fuel prices;

- b) Other resource benefits, such as reduced water usage, reduced electrical consumption, or reduced greenhouse gases emitted.
- c) Non-resource benefits, including customer benefits such as reduced operation and maintenance costs, deferred replacement costs, productivity improvements, economic development benefits and environmental benefits, to the extent such benefits can be reasonably quantified and valued.

~~_____ B. **Non-Quantifiable Cost Effectiveness Test.** The Trust may fund a program that does not satisfy the Modified Societal Test if:~~

- ~~_____ 1. Program benefits are known to exist but cannot be quantified with sufficient accuracy to conclude that the program benefits exceed the program costs; and~~
- ~~_____ 2. The entire portfolio of emergency fossil fuel programs produces quantifiable benefits that substantially exceed total portfolio program costs.~~